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ABSTRACT

Designed for the interested layman and the professional journalist, this bibliography serves as a guide to the pertinent literature on shield laws for working journalists. The collection includes a comprehensive listing of secondary sources, extracts of state laws with an indication of states currently debating the adoption of shield laws, and relevant briefs outlining the decisions in recent court cases. The document includes a list of those states with shield laws currently in effect. (RB)

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SHIELD LEGISLATION FOR JOURNALISTS:

A BIBLIOGRAPHY

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INTRODUCTION

The question of shield laws for working journalists is not a new one; however, recent developments in the area of press-government relationships have resulted in some mass media campaigns for the protection of journalists and their confidential sources of information against government investigations. A number of states recognize a newsmen's privilege, and many state legislatures currently have proposed legislation of this kind on their agendas. In addition, legal scholars and professional journalists have written a number of pertinent articles for and against the introduction of shield laws at state and federal levels.

The following bibliography is the result of a term project conducted in conjunction with a seminar on news-editorial problems at the School of Journalism, University of Iowa during the spring semester, 1973. An attempt was made to collect a comprehensive listing of secondary sources, state laws with an indication of states currently debating the adoption of shield laws, and relevant briefs outlining the holdings of recent court cases.

The bibliography is designed for the interested layman and the professional journalist as a guide to pertinent literature. No attempt was made to cover the federal shield law proposals and debates.

M.A. students who worked on the project included Michael Curless, John Heuertz, Gail Kuntz, Patrick Mulroy and Nancy Severa.

Harro Hardt
School of Journalism
May 1973

STATE STATUTES

a) Currently in Effect

ALABAMA--Code title 7, 370 (1960):

370. Newspaper, radio and television employees.--No person engaged in, connected with, or employed on any newspaper (or radio broadcasting station or television station) while engaged in a news gathering capacity shall be compelled to disclose, in any legal proceeding or trial, before any court or before a grand jury of any court, or before the presiding officer of any tribunal or his agent or agents, or before any committee of the legislature, or elsewhere, the sources of any information procured or obtained by him and published in the newspaper (or broadcasting station or televised by any television station) on which he is engaged, connected with, or employed.

ALASKA--Statutes 09.25.150, 160 (Supp. 1970):

Sec. 09.25.150. Claiming of privilege by public official or reporter. Except as provided in 150-220 of this chapter. No public official or reporter may be compelled to disclose the source of information procured or obtained by him while acting in the course of his duties as a public official or reporter. Sec. 09.25. 160. Challenge of privilege. (a) When a public official or reporter claims the privilege in a cause being heard before the supreme court or a superior court of this state, a person who has the right to question him in that proceeding, or the court on its own motion, may challenge the claim of privilege. The court shall make or cause to be made whatever inquiry the court thinks necessary to a determination of the issue. The inquiry may be made instanter by way of questions put to the witness claiming the privilege and a decision then rendered, or the court may require the presence of other witnesses or documentary showing or may order a special hearing for the determination of the issue of privilege. (b) The court may deny the privilege and may order the public official or the reporter to testify, imposing whatever limits upon the testimony and upon the right of cross-examination of the witness as may be in the public interest or in the interest of a fair trial, if it finds the withholding of the testimony would (1) result in a miscarriage of justice or the denial of a fair trial to those who challenge the privilege; or (2) be contrary to the public interest.

ARIZONA--Rev. Stat. Ann. 12-2237 (Supp. 1970):

12-2237. Reporter and informant: A person engaged in newspaper, radio, television or reportorial work, or connected with or employed by a newspaper, radio or television station, shall not be compelled to testify or disclose in a legal proceeding or trial or any proceeding whatever, or before any jury, inquisitorial body or commission, or before a committee of the legislature, or elsewhere, the source of information procured or obtained by him for publication in a newspaper or for broadcasting over a radio or television station with which he was associated or by which he is employed.

ARKANSAS--Stat. Ann. 43-917 (1964):

43-917. Newspaper or radio privilege. Before any editor, reporter, or other writer for any newspaper or periodical, or radio station, or publisher of any newspaper or periodical or manager or owner of any radio station, shall be required to disclose to any Grand Jury or to any other authority, the source of information used as the basis for any article he may have written, published or broadcast, it must be shown that such article was written, published or broadcast in bad faith, with malice, and not in the interest of the public welfare.

CALIFORNIA--Evid. Code 1070 (1966, amended April, 1971 and December, 1972):

Newsman's refusal to disclose news source. A publisher, editor, reporter, or other person connected with or employed upon a newspaper, or by a press association or wire service, or persons who have been connected with or employed upon a newspaper, or by a press association or wire service, cannot be adjudged in contempt by a judicial, legislative, administrative body, or any other body having the power to issue subpoenas for refusing to disclose the source of any information procured for publication in a newspaper.

Nor can a radio or T.V. news reporter or other person connected with or employed by a radio or T.V. station be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or T.V.

ILLINOIS--Public Law 77-1623, approved September 23, 1971:

Section 1. No court may compel any person to disclose the source of any information obtained by a reporter during the course of his employment except as provided in this Act. The privilege conferred by this Act is not available in any libel or slander action in which a reporter or news medium is a party defendant.

Section 2. As used in this Act:

a. "reporter" means any person regularly engaged in the business of collecting, writing or editing news for publication through a news medium; and includes any person who was a reporter at the time the information sought was procured or obtained.

b. "news medium" means any newspaper or other periodical issued at regular intervals and having a paid general circulation; a news service; a radio station; a television station; a community antenna television service; and, any person or corporation engaged in the making of news reels or other motion picture news for public showing.

c. "source" means the person or means from or through which the news or information was obtained.

Section 3. In any case where a person claims the privilege conferred by this Act, the person or party, body or officer, seeking the information so privileged, may apply in writing to the circuit court serving the county where the hearing, action or proceeding in which the information is sought for an order divesting the person

named therein of such privilege and ordering him to disclose his source of the information.

Section 4. The application provided in Section 3 of this Act shall allege: the name of the reporter and of the news medium with which he was connected at the time the information sought was obtained; the specific information sought and its relevancy to the proceedings; and, a specific public interest which would be adversely affected if the factual information sought were not disclosed.

Section 5. All proceedings in connection with obtaining an adjudication upon the application not otherwise provided in this Act shall be governed by the Civil Practice Act.

Section 6. In granting or denying divestiture of the privilege provided in this Act the court shall have due regard to the nature of the proceedings, the merits of the claim or defense, the adequacy of the remedy otherwise available, if any, the relevancy of the source, and the possibility of establishing by other means that which it is alleged the source requested will tend to prove.

Section 7. An order granting divestiture of the privilege provided in this Act shall be granted only if the Court, after hearing the parties, shall find: (a) that the information sought does not concern matters, or details in any proceeding, required to be kept secret under the laws of this State or of the Federal government; and (b) that all other avialable sources of information have been exhausted and disclosure of the information sought is essential to the protection of the public interest involved.

If the court enters an order divesting the person of the privilege granted in this Act it shall also order the person to disclose the information it has determined should be disclosed.

Section 8. An order entered under this Act is appealable the same as a comparable order in a civil case under Supreme Court Rules and is subject to being stayed. In case of an appeal the privilege conferred by this Act remains in full force and effect during the pendency of such appeal.

Section 9. A person refusing to testify or otherwise comply with the order to disclose the source of the information as specified in such order, after such order becomes final, may be adjudged in contempt of court and punished accordingly.

INDIANA--Stat. Ann 2-1733 (1968):

2-1733. Newspapers, television and radio stations--Press associations--Employees and representatives--Immunity.--Any person connected with a weekly, semiweekly, triweekly or daily newspaper that conforms to postal regulations, which shall have been published for five [5] consecutive years in the same city or town and which has a paid circulation of two per cent [2%] of the population of the county in which it is published, or a recognized press association, as a bona fide owner,

editorial or reportorial employee, who receives his or her principal income from legitimate gathering, writing, editing and interpretation of news, and any person connected with a commercially licensed radio or television station as owner, official, or as an editorial or reportorial employee who receives his or her principal income from legitimate gathering, writing, editing, interpreting, announcing or broadcasting of news, shall not be compelled to disclose in any legal proceedings or elsewhere the source of any information procured or obtained in the course of his employment or representation of such newspaper, press association, radio station or television station, whether published or not published in the newspaper or by the press association or broadcast or not broadcast by the radio station or television by which he is employed.

KENTUCKY--Rev. Stat. Ann. 421.100 (1960):

421.100 [1649 d-1] Newspaper, radio or television broadcasting station personnel need not disclose source of information. No person shall be compelled to disclose in any legal proceeding or trial before any court, or before any grand or petit jury, or before the presiding officer of any tribunal, or his agent or agents, or before the General Assembly, or any committee thereof, or before any city or county legislative body, or any committee thereof, or elsewhere, the source of any information procured or obtained by him, and published in a newspaper or by a radio or television broadcasting station by which he is engaged or employed, or with which he is connected.

LOUISIANA--Rev. Stat. title 45 1451-54 (Supp. 1970):

1451. Definitions. "Reporters" shall mean any person regularly engaged in the business of collecting, writing or editing news for publication through a news medium. The term reporter shall include all persons who were previously connected with any news media as aforesaid as to the information obtained while so connected. "News Media" shall include (a) Any newspaper or other periodical issued at regular intervals and having a paid general circulation; (b) Press associations: (c) Wire service; (d) Radio; (e) Television; and (f) Persons or corporations engaged in the making of news reels or other motion picture news for public showing.

1452. Conditional privilege from compulsory disclosure of informant or source. Except as hereinafter provided, no reporter shall be compelled to disclose in any administrative, judicial or legislative proceedings or anywhere else the identity of any informant or any source of information obtained by him from another person while acting as a reporter.

1453. Revocation of privilege; procedure. In any case where the reporter claims the privilege conferred by this Part, the persons or parties seeking the information may apply to the district court of the parish in which the reporter resides for an order to revoke the privilege. In the event the reporter does not reside within the state, the application shall be made to the district court of the parish where the hearing, action of proceeding in which the information is sought is pending. The application for such an order shall set forth in writing the reason why

the disclosure is essential to the protection of the public interest and service of such application shall be made upon the reporter. The order shall be granted only when the court, after hearing the parties, shall find that the disclosure is essential to the public interest. Any such order shall be appealable under Article 2083 of the Louisiana Code of Civil Procedure. In case of any such appeal, the privilege set forth in R.S. 45:1452 shall remain in full force and effect during pendency of such appeal.

1454. Defamation; burden of proof. If the privilege granted herein is claimed and if, in a suit for damages for defamation, a legal defense of good faith has been asserted by a reporter or by a news medium with respect to an issue upon which the reporter alleges to have obtained information from a confidential source, the burden of proof shall rest on the reporter or news medium to sustain this defense.

MARYLAND--Code Ann. article 35 2(1965):

2. Employees on newspapers or for radio or television stations cannot be compelled to disclose source of news or information. No person engaged in, connected with or employed on a newspaper or journal or for any radio or television station shall be compelled to disclose, in any legal proceeding or trial or before any committee of the legislature or elsewhere, the source of any news or information procured or obtained by him or published in the newspaper or disseminated by the radio or television station on and in which he is engaged, connected with or employed.

MICHIGAN--C.L. 767.5a (1968):

767.5a. Certain communications declared privileged and confidential. In any inquiry authorized by this act communications between reporters of newspapers or other publications and their informants are hereby declared to be privileged and confidential. Any communications between attorneys and their clients, between clergymen and the members of their respective churches, and between physicians and their clients, between clergymen and the members of their respective churches, and between physicians and their patients are hereby declared to be privileged and confidential when such communications were necessary to enable such attorneys, clergymen, or physicians to serve as such attorney, clergyman, or physician.

MONTANA--R. Code Ann. title 93 601-1, 601-2 (1947):

93-601-1. Reporters' Confidence Act. This act shall be known and maybe cited as the Reporters' Confidence Act.

93-601-2. Disclosure of source of information--when not required. No persons engaged in the work of, or connected with or employed by any newspaper or any press association, or any radio broadcasting station, or any television station for the purpose of gathering, procuring, compiling, editing, disseminating, publishing, broadcasting or televising news shall be required to disclose the source of any

information procured or obtained by such person in the course of his employment, in any legal proceeding, trial or investigation before any court, grand jury or petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent or agents, or before any commission, department, division or bureau of the state, or before any county or municipal body, officer or committee thereof.

NEBRASKA--Legislative Bill 380 (1973):

LB380. Section 1. The Legislature finds: (1) That the policy of the State of Nebraska is to insure the free flow of news and other information to the public, and that those who gather, write, or edit information for the public or disseminate information to the public may perform these vital functions only in a free and unfettered atmosphere; (2) That such persons shall not be inhibited, directly or indirectly, by governmental restraint or sanction imposed by governmental process, but rather that they shall be encouraged to gather, write, edit, or disseminate news or other information vigorously so that the public may be fully informed; (3) That compelling such persons to disclose a source of information or disclose unpublished information is contrary to the public interest and inhibits the free flow of information to the public. (4) That there is an urgent need to provide effective measures to halt and prevent this inhibition; (5) That the obstruction of the free flow of information through any medium of communication to the public affects interstate commerce; and (6) That this act is necessary to insure the free flow of information and to implement the first and fourteenth amendments and Article I, section 8, of the United States Constitution, and the Nebraska Constitution.

Section 2. As used in this act, unless the context otherwise requires: (1) Federal or state proceeding shall include any proceeding or investigation before or by any federal or state judicial, legislative, executive, or administrative body; (2) Medium of communication shall include, but is not limited to, any newspaper, magazine, other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, or cable television system; (3) Information shall include any written, audio, oral or pictorial news or other material; (4) Published or broadcast information shall mean any information disseminated to the public by the person from whom disclosure is sought; (5) Unpublished or nonbroadcast information shall include information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and shall include, but not be limited to, all notes, outtakes, photographs, film, tapes, or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published or broadcast information based upon or related to such material has been disseminated; (6) Processing shall include compiling, storing, transferring, handling, and editing of information; and (7) Person shall mean any individual, and any partnership, corporation, association, or other legal entity existing under or authorized by the law of the United States, any state or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

Section 3. No person engaged in procuring, gathering, writing, editing, or disseminating news or other information to the public shall be required to disclose in any federal or state proceeding: (1) The source of any published or unpublished, broadcast or nonbroadcast information obtained in the gathering, receiving, or processing of information for any medium of communication to the public; or (2) Any unpublished or nonbroadcast information obtained or prepared in gathering, receiving, or processing of information for any medium of communication to the public.

Section 4. This act shall be known and may be cited as the Free Flow of Information Act.

Section 5. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.

NEW JERSEY--Rev. Stat. 2A:84A-21 (Supp. 1970):

2A:84A-21. Newspaperman's privilege. Rule 27. Subject to Rule 37, a person engaged on, connected with, or employed by a newspaper has a privilege to refuse to disclose the source, author, means, agency or person from or through whom any information published in such newspaper was procured, obtained, supplied, furnished, or delivered.

[Rule 37: A person waives his right or privilege to refuse to disclose or to prevent another from disclosing a specified matter if he or any other person while the holder thereof has (a) contracted with anyone not to claim the right or privilege or, (b) without coercion and with knowledge of his right or privilege made disclosure of any part of the privileged matter or consented to such a disclosure made by anyone.

A disclosure which is itself privileged or otherwise protected by the common law, statutes or rules of court of this State, or by lawful contract, shall not constitute a waiver under this section. The failure of a witness to claim a right or privilege with respect to one question shall not operate as a waiver with respect to any other question.]

NEW MEXICO--Stat. Ann. 20-1-12.1 (Supp. 1970):

20-1-12.1. Privileged communication--Reporters. A. It is hereby declared to be the public policy of New Mexico that no reporter shall be required to disclose before any proceeding or by any authority the source of information procured by him in the course of his employment as a reporter for a news media unless disclosure be essential to prevent injustice. In granting or denying a testimonial privilege under this act [section], the court shall have due regard to the nature of the proceeding, the merits of the claim or defense, the adequacy of the remedy otherwise available, the relevancy of the source, and the possibility of establishing by other means that which the source is offered as tending to prove. An order compelling disclosure shall be appealable, and subject to stay.

B. As used in this section: (1) "reporter" means any person regularly engaged in the business of collecting, writing or editing news for publication through a news medium, and includes any person who was a reporter at the time the information was obtained but is no longer acting as a reporter; and (2) "news media" means any newspaper or other periodical issued at regular intervals and having a paid general circulation; a press association; a wire service; a radio station or a television station.

C. Any reporter may waive the privilege granted in this section.

NEW YORK--Civ. Rights Law 79-h (McKinley 1970):

79-h. Special provisions relating to persons employed by, or connected with, news media. (a) Definitions. As used in this section, the following definitions shall apply: (1) "Newspaper" shall mean a paper that is printed and distributed ordinarily not less frequently than once a week, and has done so for at least one year, and that contains news, articles of opinion (as editorials), features, advertising, or other matter regarded as of current interest, has a paid circulation and has been entered at United States post office as second-class matter. (2) "Magazine" shall mean a publication containing news which is published and distributed periodically, and has done so for at least one year, has a paid circulation and has been entered at a United States post office as second-class matter. (3) "News agency" shall mean a commercial organization that collects and supplies news to subscribing newspapers, magazines, periodicals and news broadcasters. (4) "Press association" shall mean an association of newspapers and/or magazines formed to gather and distribute news to its members. (5) "Wire service" shall mean a news agency that sends out syndicated news copy by wire to subscribing newspapers, magazines, periodicals or news broadcasters. (6) "Professional journalist" shall mean one who, for gain or livelihood, is engaged in gathering, preparing or editing of news for a newspaper, magazine, news agency, press association or wire service. (7) "Newscaster" shall mean a person who, for gain or livelihood, is engaged in analyzing, commenting on or broadcasting, news by radio or television transmission. (8) "News" shall mean written, oral or pictorial information or communication concerning local, national or worldwide events or other matters of public concern or public interest or affecting the public welfare.

(b) Exemption of professional journalists and newscasters from contempt. Notwithstanding the provisions of any general or specific law to the contrary, no professional journalist or newscaster employed or otherwise associated with any newspaper, magazine, news agency, press association, wire service, radio or television transmission station or network, shall be adjudged in contempt by any court, the legislature or other body having contempt powers, for refusing or failing to disclose any news or the source of any such news coming into his possession in the course of gathering or obtaining news for publication or to be published in a newspaper, magazine, or for broadcast by a radio or television transmission station or network, by which he is professionally employed or otherwise associated in a news gathering capacity.

NEVADA--Rev.Stat. 49.275 (1969):

Section 49.275. No reporter or editorial employee of any newspaper, periodical, press association or radio or television station may be required to disclose the source of any information procured or obtained by such person, in any legal proceedings, trial or investigation:

1. Before any court, grand jury, coroner's inquest, jury or any office thereof.
2. Before the legislature of any committee thereof.
3. Before any department, agency or commission of the state.
4. Before any local governing body or committee thereof, or any officer of a local government.

OHIO--Rev. Code Ann. 2739.04, .12 (1953):

2739.04 Revelation of news source by broadcasters. No person engaged in the work of, or connected with, or employed by any commercial radio broadcasting station, or any commercial television broadcasting station, or network of such stations, for the purpose of gathering, procuring, compiling, editing, disseminating, publishing or broadcasting news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding, trial, or investigation before any court, grand jury, petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent, or before any commission, department, division, or bureau of this state, or before any county or municipal body, officer or comittee thereof.

Every commercial radio broadcasting station, and every commercial television broadcasting station shall maintain for a period of six months from the date of its broadcast thereof, a record of those statements of information the source of which was procured or obtained by persons employed by the station in gathering, procuring, compiling, editing, disseminating, publishing, or broadcasting news.

2739.12. Newspaper reporters not required to reveal source of information. (GC 6319-2a) No person engaged in the work of, or connected with, or employed by any newspaper or any press association for the purpose of gathering, procuring, compiling, editing, disseminating, or publishing news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding, trial, or investigation before any court, grand jury, petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent, or before any commission, department, division, or bureau of this state, or before any county or municipal body, officer or committee thereof.

NORTH DAKOTA--SB 2077:

An Act to provide protection of news sources and information from disclosure except under certain circumstances.

Be it enacted by the Legislative Assembly of the State of North Dakota: Section 1. Disclosure of news sources and information required only on court order. No person shall be required in any proceeding or hearing to disclose any information or the source of any information procured or obtained while the person was engaged in gathering, writing, photographing, or editing news and was employed by or acting for any organization engaged in publishing or broadcasting news, unless directed by an order of a district court of this state which, after hearing, finds that the failure of disclosure of such evidence will cause a miscarriage of justice.

PENNSYLVANIA--Stat. Ann. title 28 330 (1958):

330. Confidential communications to news reporters. (a) No person, engaged on, connected with, or employed by any newspaper of general circulation as defined by the laws of this Commonwealth, or any press association or any radio or television station, or any magazine of general circulation, for the purpose of gathering, procuring, compiling, editing or publishing news, shall be required to disclose the source of any information procured or obtained by such person, in any legal proceeding, trial or investigation before any court, grand jury, traverse or petit jury, or any officer thereof, before the General Assembly or any committee thereof, before any commission, department or bureau of this Commonwealth, or before any county or municipal body, officer, or committee thereof. (b) The provisions of subsection (a) hereof in so far as they relate to radio or television stations will not apply unless the radio or television station maintains and keeps open for inspection, for a period of at least one year from the date of the actual broadcast or telecast, an exact recording, transcription, kinescopic film or certified written transcript of the actual broadcast or telecast.

RHODE ISLAND--Stat. Ann. chaper 86 (1971):

Chapter 86. An Act providing that persons directly engaged in gathering or presenting news shall not be required to divulge the source of certain information. It is enacted by the General Assembly as follows. Section 1, title 9 of the general laws entitled "Courts and civil procedure--procedure generally" is hereby amended by adding thereto the following chapter. Chapter 19.1 Newsman's Privilege Act. 9-19. 1-1. Newspaper Defined-- A newspaper or periodical as described in this chapter must be issued at regular intervals and have a paid circulation.

19-19. 1-2. NONDISCLOSURE OF CONFIDENTIAL INFORMATION---Except as provided in section 9-19. 1-3, no person shall be required by any court, grand jury, agency, department, or commission of the state of Rhode Island to reveal confidential association, to disclose any confidential information or to disclose the source of any confidential information received or obtained by him in his capacity as a reporter, editor, commentator, journalist, writer, correspondent, newsphotographer, or other person directly engaged in the gathering or presentation of news for any accredited newspaper, periodical, press association, newspaper syndicate, wire service, or radio or television station.

9-19. 1-3. Qualifications. (a) The privilege conferred by section 9-19. 1-2 shall not apply to any information which has at any time been published, broadcast, or otherwise made public by the person claiming the privilege.

(b) The privilege conferred by section 9-19. 102 shall not apply (1) to the source of any allegedly defamatory information in any case where the defendant in a civil action for defamation, asserts a defense based on the source of such information; or (2) to the source of any information concerning the details of any grand jury or other proceeding which was required to be secret under the laws of the state.

(c) In any case where a person claims a privilege conferred by this statute, the person seeking the information or the source of the information may apply to the superior court for an order divesting the privilege. If the court after hearing the parties, shall find that there is substantial evidence that disclosure of the information or of the source of the information is necessary to permit a criminal prosecution for the commission of a specific felony, or to prevent a threat to human life, and that such information or the source of such information is not available from other prospective witnesses, the court may make such order as may be proper under the circumstance. Any such order shall be appealable under the provisions of chapter 9-24 of the general laws.

Section 2. This act shall take effect upon its passage.

TENNESSEE-SB 116.

Section 1. A person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast, shall not be required by a court, a grand jury, the legislature, or any administrative body, to disclose before the General Assembly or any Tennessee court, grand jury, agency, department, or commission any information or the source of any information procured for publication or broadcast.

Section 2. The first section of this act shall not apply with respect to the source of any allegedly defamatory information in any case where the defendant in a civil action for defamation asserts a defense based on the source of such information.

Section 3. Any person seeking information or the source thereof protected under this act may apply to the court of appeals for an order divesting such protection. Such application shall be made to the court of appeals in the grand division of the state of Tennessee wherein the hearing, action or other proceeding in which the information sought is pending. The application shall be granted only if the court after hearing the parties determines that the person seeking the information has shown by clear and convincing evidence (1) there is probably cause to believe that the person from whom the information is sought has information which is clearly relevant to a specific probable violation of law; (2) has demonstrated that the information sought cannot reasonably be obtained by alternative means;

and (3) has demonstrated a compelling and overriding public interest of the people of the state of Tennessee in the information. An order of the court of appeals may be appealed to the supreme court of Tennessee.

Section 4. This act shall take effect on becoming a law, the public welfare requiring it.

b) Currently Introduced

Shield legislation is currently being introduced in at least thirteen states including:

Connecticut
Florida
Hawaii
Iowa
Kansas
Maine
Massachusetts
Minnesota
Mississippi
Missouri
Oregon
South Carolina
Texas

Shield legislation has recently been considered and already killed in the legislature of:

Georgia
Oklahoma
South Dakota
Washington
Wisconsin

Amendments to existing shield laws have been offered this year in:

California
Illinois
Maryland
Michigan
New Jersey
Ohio

COURT CASES

Cases involving or relating to newsmen's rights and privileged information were brought before the courts as early as the late 1800's [see People ex rel Phelps v Francher, 2 Hun. (N.Y.) 226, 4 Thomp. and C 467 - 1874]. Some of the 'classic' cases prior to the institution of shield laws are: Garland v. Torre, 259 F. 2d 545 (2d cir.), cert. denied, 358 U.S. 910, 3 L. Ed. 2d 231 (1958); In re Goodfader's Appeal, 45 Hawaii 317, 367 P. 2d. 472 (1961); State v. Buchanan, 250 Oregon 244, 436 P. 2d. 729, cert. denied, 392 U.S. 905, 88 S. Ct. 2055, 20 L. Ed. 2d. 1363 (1968).

Following, however, are brief synopses of more recent cases which were adjudicated after the introduction of various state shield laws.

Stewart Dan and Roland Barnes of WGR-TV, Buffalo, refused to tell a grand jury what they saw during the Attica prison riots on the claim that they would not have been admitted to the prison by the inmates had the inmates thought the reporters would testify before a grand jury. The case is on appeal.

* * *

A freelance writer for the Saturday Evening Post, Alfred Balk, refused to disclose his source about block-busting in Chicago before a federal civil rights case hearing. The U.S. Court of Appeals upheld Balk and refused to extend the Caldwell decision. An appeal is likely.

* * *

Los Angeles Free Press editor Arthur Kunkin and reporter Gerald R. Applebaum were required to reveal their source of information on state undercover narcotics agents. The case was complicated by charges that they had received stolen property - a list of agents and other documents. Their appeal is now before the California Supreme Court.

* * *

Two Baton Rouge reporters, Larry Dickinson of the State Times and Gibb Adams of the Morning Advocate, were charged with contempt of court for reporting on an open civil rights case hearing. Although the contempt charge was overturned by the U.S. Court of Appeals, which ruled the reporters must obey a censorship order, whether it is valid or not, while the order is being appealed, the contempt charge was again imposed last October. An appeal is now pending.

* * *

Other cases which occurred prior to the institution of modern shield laws[15] and which are of historical note include:

Pledger v. State, 77 Ga. 242, 2 S.E. 320 (1886)
Ex parte Lawrence, 116 Cal. 298, 48 Pac. 124 (1897)
People v. Durrant, 116 Cal. 179, 48 Pac. 75 (1897)
Clinton v. Commercial Tribune Company, 8 Ohio N.P. 655 (1901)
Plunkett v. Hamilton, 136 Ga. 72, 70 S.E. 781 (1911)
In re Grunow, 84 N.J.L. 235, 85 A. 1011 (1913)
In re Wayne, 4 Hawaiian Dist. Ct. 475 (1914)
Burdick v. United States, 236 U.S. 79 (1915)
Joslyn v. People, 67 Colo. 297, 185 Pac. 657 (1919)
Ex parte Taylor, 110 Texas 331, 220 S.W. 74 (1920)
People ex rel, Mooney v. Sheriff of New York County, 269 N.Y. 291, 199 N.E. 415 (1936)
State v. Package-Bamberger & Co., Inc., 123 N.J.L. 180, 8 A. 2d. (1939)
State v. Donovan, 129 N.J.L. 478, 30 A. 2d. 421 (1943)
People ex rel. Clarke v. Truesdell, 79 N.Y. Supp. 2d 413 (1948)
Clein v. State, 52 So. 2d 117 (Florida, 1950)
Rosenberg v. Carroll, In re Lyons, 99 F. Supp 629 (1951)
United States v. Rumely, 345 U.S. 41, 97 L. Ed. 770, 73 S. Ct. 543 (1953)
In re Howard, 136 Cal. App. 2d. 816, 289 P. 2d. 537 (1955)
Brogan v. Passaic Daily News, 22 N.J. 139, 123 A. 2d. 473 (1956)
Brewster v. Boston Herald-Traveler Corp., D.C., 20 F.R.D. 416 (1957)
Murphy v. Colorado, 365 U.S. 843 (1961), cert. denied.
In re Cepeda, 233 F. Supp. 465 (S.D.N.Y. 1964)
Adams v. Associated Press, 46 F.R.D. 439 (1969)
People v. Rios, Crim. No. 75129 (Cal. Super. Ct., July 20, 1970)
People v. Davis, N.Y. App. Div. 1st, 313 N.Y.S. 2d. 638 Mem. (June 23, 1971)
State v. Knops, 49 Wis, 2d. 647, 183 N.W. 2d. 93 (1971)

* * *

ALABAMA

Hugh Sparrow gathered information and wrote articles about conditions in Alabama state prisons while working for the Birmingham News. Some of his sources were state employees, who gave him reports in confidence. Some of Sparrow's information was related to another author who published it in a New York publication, and, as a result, Dell, the New York publisher, was sued for libel by James E. Folsom, governor of Alabama at the time the information was gathered. Sparrow was called to testify prior to the trial and he refused to answer questions which would have disclosed his sources, invoking Alabama Statute Tit. 7 & 370 as his cause. The court granted Sparrow use of the privilege, although the privilege was Alabama law and the civil action involved was brought in New York, a state without a privilege statute at the time. Because the newsman's testimony was being sought in Alabama (Birmingham), the Federal District Court in Alabama was the proper forum to decide the issue and it would therefore refer to Alabama law, in the absence of Federal law, regardless of whether or not New York granted a newsman's privilege. The court ruled that the Alabama statute was not unconstitutional in violation of the Fourteenth Amendment. [Ex parte Sparrow, 14 FRD. 351 (1953)]

CALIFORNIA

The mayor of San Francisco Brought a libel action in federal court for a magazine article accusing him of having Mafia connections. When the authors of the article refused to answer questions relating to the identity of their source, the mayor filed a contempt motion. The district court refused to grant the motion, affirming a First Amendment claim of privilege. They also stated that there was a lack of reasonable necessity at the time and that there were other available methods of handling the situation. [Alioto v Cowles Communications, Inc. CA #52150 (N.D. Cal. Dec. 4, 1969)]

* * *

Two professional journalists working for the Black Panther newspaper were compelled to appear before a grand jury investigating possible violations of federal laws protecting the life of the president, prohibiting acts directed against the country's security, etc. As professional journalists they would not have been required to reveal confidential information received by them in their occupations. However, the government asserted that a compelling and overriding national interest to obtain the witnesses' testimony necessitated the compelling of testimony anyway. The district court's decision was that the government did present a valid argument of overriding national interest and ordered the journalists to appear before the grand jury and answer all questions. [In re Grand Jury Witnesses, 322 F. Supp. 573 (1970)]

* * *

Earl Caldwell of the New York Times refused to disclose to a federal grand jury the confidential source of published information about the Black Panthers. Although the court upheld his right to protect his confidential sources, Caldwell maintained that merely by appearing before a grand jury he would risk the loss of these confidential sources. The Supreme Court ruled 5 to 4 in June, 1972 that the Constitution does not grant a newsman's privilege. [United States v Caldwell, 311 F. Supp. 358 (N.D. Cal.) 434 F. 2d 1081 (9th Cir.) rev'd, 408 U.S. 665, 92 S. Ct. 2646, 33 L. Ed. 2d. 626 (1972).]

* * *

Reporter William Farr of the Los Angeles Herald-Examiner refused to disclose to a county court judge the confidential source who supplied him with a confession obtained by the prosecution in the celebrated Manson - Tate murder case. The Supreme Court denied his state court appeal and Farr filed a federal habeas corpus proceeding. In January, 1973, Supreme Court Justice William O. Douglas ordered Farr freed from jail after forty-six days, pending the appeal of his federal case. [Farr v Superior Court of Los Angeles, 22 Cal. App. 3d. 60, 99 Cal Reptr. 342 (1972).]

INDIANA

Buford Lipps was charged with the robbery of a cocktail lounge along with George Hestand (see Hestand v State velor). Lipps' defense counsel objected to

the testimony of the reporter which included the fact that Lipps had admitted shooting the bartender. Counsel stated that the testimony was privileged information and was protected under the Indiana shield law. The court held that Lipps did not have standing to object under the statute as it created a right personal to the reporter which only he could invoke. In this case, however, the reporter was willing to testify and thus did no invoke the immunity afforded by the shield statute. Lipps was convicted on the basis of the admission. [Lipps v State - Ind. App -, 258 N.E. 2nd 622 (1970)]

* * *

George Hestand and two others were involved in the robbery of a cocktail lounge during which two police officers were wounded and a fourth hold-up man was killed. While in custody awaiting trial, Hestand admitted the crime to a newsman who testified to that fact and Hestand was convicted. In his appeal Hestant attempted to remove the testimony by basing an objection upon the Miranda decision (Miranda v Arizona, 384 U.S. 436 - 1966) which required the shielding of a suspect from coercive practices associated with "in custody" police interrogations. The court ruled the Miranda decision could not apply to protect one against his own voluntary statements made to a private citizen in an interview requested by the party and conducted outside the presence of the police. [Hestand v State, 273 N.E. 2d 232 (1971).]

KENTUCKY

Paul Branzburg of the Louisville Courrier-Journal refused to disclose to a county grand jury his confidential source of information about local drug abuse. The Supreme Court held against him, 5 to 4 in the Caldwell decision. [Branzburg v Pound. 461 S.W. 2d 345 (Ky. 1970).]

MARYLAND

Walter Sheridan, a special correspondent and investigative reporter for a national broadcasting network, refused to tell a grand jury the details of a conversation between himself and one Patrick concerning suspected irregularities or unlawfullness in administrative zoning decisions, despite the fact that the substance of the conversation had been publicly disseminated and although Sheridan did tell the jury that Patrick was the source. Sheridan asserted his "newsman's privilege" by citing Article 35, Sec. 2 of the State Code. By the time the State's appeal reached the Court of Appeals the grand jury term had ended and it had been dismissed, therefore the court refused to rule as the case had become moot. The court did give some indication of its feeling on the matter as Judge Moorman sustained Sheridan's claim that his "newspaperman's privilege" of never violating a confidence allowed him to refuse to divulge the details of his conversation with Patrick and dismissed the petition. He did this despite the fact that the statute protects only the source of news and not the "news or information itself." [State of Maryland v. Walter J. Sheridan 248 Md. 320, 236 A. 2d 18 (1967).]

* * *

Baltimore Evening Sun reporter David Lightman was held in contempt for refusing to disclose to a county grand jury the source of information about drug abuse at a seashore resort. The Maryland courts said that Lightman could not invoke the state newsman's privilege law because he obtained the information by posing as a casual shopper, and not by informing his source that he was a newsman. The case is pending in the U.S. Supreme Court. [Lightman v State, 294 A 2d 149 (Md. 1972).]

MASSACHUSETTS

Paul Pappas of a New Bedford, Massachusetts tv station refused to disclose to a county grand jury the confidential information he obtained when he spent some time inside a black militant group's headquarters. The Supreme Court ruled against him 5 to 4 in the Caldwell decision. [In re Pappas, Mass. ---, 266 N.E. 2nd 297, aff'd, 408 U.S. 665, 92 S. Ct. 2646, 33 L. Ed. 2d 6261 (1972).]

NEW JERSEY

On July 24, 1963 The Point Pleasant Reader published an editorial which accused the police chief of allegedly performing his duties in an unlawful, partial and dictatorial manner, without regard to the rights of the public, contrary to law and in violation of his oath of office. When Chief William Beecroft, sued for libel and asked for the facts upon which the newspaper based the editorial opinion and for the source or sources of those facts, including names, addresses and position, the defendants claimed the information was confidential communication between newsmen and their informants and therefore privileged. The court said that the paper had waived its privilege by printing part of the communication and therefore it would have to answer the plaintiff's questions. In a defamation issue, the court said the paper could not set forth whatever defense is favorable to its position, and then plead the privilege to prevent any disclosure of detrimental facts. [Beecroft v Point Pleasant Printing and Publishing Co. 197 A 2d 416 (1964).]

* * *

Peter Bridge of the now-defunct Neward News declined to tell a county grand jury the unpublished details of an interview with a Newark Housing Commissioner who alleged she had been offered a bribe. He was jailed for three weeks in October, 1972. The New Jersey courts ruled that the state newsman's privilege law protecting sources did not protect Bridge because he had named his source. [In re Bridge, 120 N.J. Super. 460, 295 A. 2d 3 (1972).]

NEW YORK

New York radio station WBAI-FM obtained a letter written by the "Weather Underground" asserting responsibility for bombing the offices of the New York State Correction Commissioner in Albany. The letter was the subject of a grand jury subpoena in its investigation into the incident. WBAI-FM sought to quash

the grand jury subpoena duces tecum citing the protection of the press and indicating that complete confidentiality should be given communications of this nature. The motion was denied by the County Court of Albany which indicated that no confidence was involved and the radio station was not exercising a news gathering function when theinformation was given. [WBAI-FM 326 N.Y.S. 2d 434 In the matter of a grand jury subpoena Duces Tecum served upon WBAI-FM (Nov. 1971).]

* * *

Radio station WBAI declined to submit to a trial subpoena for original tape recordings of interviews with prisoners involved in the Toombs Prison riot in New York City. WBAI claimed that the originals could be used to identify prisoners who wanted to remain anonymous. Station manager Edwin A. Goodman was briefly jailed in March, 1972. The New York District Attorney eventually dropped the subpoena. [People v Doe (People v Goodman), 333 N.Y.S. 2d 876 (1972).]

* * *

In July 14, 1962, Saturday Evening Post article entitled, "Confessions of a Chicago real estate agent moved Negro families into all-white neighborhoods and reaped enormous profits from racial prejudice. When Balk was asked to testify persuant to subpoena for alledged sales of used residential property to plaintiffs at high prices and more burdensome terms than would have been applied to white purchasers, the court refused to compel Balk to reveal his source of information where facts could also be obtained by search of title records. The plaintiffs had not shown that disclosure of the journalist's sources was essential to protection of the public interest involved. The judge also stated that both Illinois and New York have statutes protecting a reporter from being required to disclose his source. [Charles Baker et al. v F & F Investment et al. 339 F. Supp. 942 (1972).]

* * *

Three months after the tombs riots the Village Voice published an aritcle on the riots by an inmate, Ricardo de Leoni, who was indicted with others for various crimes allegedly committed during the riots. A subpoena duces tecum was issued demanding the original manuscript of the article, and Daniel Wolf, editor, moved to quash the subpoena on grounds that news gathering potential would be impaired by requiring its production. He also raised the claim of privilege under Statute 79-h. The court denied Wolf's motion on the grounds that when a published confession identified the person making the confession, news gathering potential would not be impaired by requiring production of the manuscript. The statute does not apply since confidentiality or anonymity is not an issue here. The privilege statute only applies when the information or its sources must be transfered to the reporter under a cloak of confidentiality and the information must be obtained in the course of gathering news for publication. [People v Wolf 329 N.Y.S. 2d 291 (1972).]

OHIO

Deltec, Inc. asked Dun and Bradstreet, Inc., publishers of a biweekly summary of business information on 50,000 individuals and businesses, to show its

records. Dun and Bradstreet refused, claiming protection under Section 2739.12 of the Ohio code, which protects "newspapers and press associations" from compulsory disclosure of information. The court found that Dun and Bradstreet is not a "newspaper" within the meaning of Section 2739.12, even though it may be a periodical. Although "periodical" is specifically included in the sections before and after section 2739.12, it is conspicuously absent in Section 2739.12. Dun and Bradstreet's objection was overruled. [Deltec, Inc. v Dun and Bradstreet, Inc. 187 F. Supp. 788 (1960).]

PENNSYLVANIA

After the Philadelphia Bulletin, a daily newspaper, did a lengthy series on corruption in city government in 1962, an investigating grand jury tried to obtain certain documents and tape recordings used to assemble the stories and tried to compel newspaper officials to answer questions about the data they had. Bulletin officials refused, claiming newsman's privilege under the 1937 state law. Although a lower court found the officials in contempt of court and said the statute protected only against compulsory disclosure of the identiry of persons, the Pennsylvania Supreme Court ruled 7-1 that the statutory fight of non-disclosure of the source of any information included not only the identity of a person, but also documents, inanimate objects, and all sources of information. The court said there was no waiver of the privilege of nondisclosure by Bulletin officials in the case at bar, and that newsman's waiver of the right not to be required to disclose sources of information applies only to "statements made by an informer which are actually published or publicly disclosed, and not to other statements made by informers to a newspaper." [In re Taylor 412 Pa. 32; 193 A. 2d 181 (1963).]

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